IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 873 of 2004

MUKESH KUMAR MALI
V/S
STATE & ORS

Mr. GIRISH SANKHALA, for the appellant / petitioner

Mr. DS RAJVI, for the respondents.

Date of Order : 23.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The relief claimed in the petition is, that the respondents may be directed to make the payment of salary, due from December, 2003, and to continue to make regular payment of salary in future. The other relief claimed is, that the respondents be directed not to restrain the petitioner from making his signatures in the attendance register, and the petitioner be allowed to work till the completion of the programme.

The factual averments are, that under the Scheme Sarva Shiksha Abhiyan, the petitioner was appointed by Block Research Centre Facilitator (BRCF), as a daily rated Class IV employee, at a salary of Rs. 60/- per day. It is alleged in para-4 of the petition, that the applications

were invited for the post of Class IV employees, as per the requirement of the programme, the petitioner also applied for the post, and in view of his qualification he was selected and appointed. It was also pleaded, that a copy of the provisions to make appointment of employees will be kept ready at the time of hearing before Hon'ble Court. Then, it is also pleaded in this very para, that "A photo copy/typed copy of the application of the petitioner by which he applied for appointment and the letter dt. 4.2.2003 are enclosed herewith and marked as ANNEXURE-2 & ANNEXURE-3 respectively". The case of the petitioner is that since then he is continuously working. Then, it is alleged, that the respondents were giving salary every month by bill and cheque, and attendance was marked. Salary bills have been produced as Annexure-4. Then, it is alleged, that abruptly the respondents stopped making payment of salary in the month of December, 2003, without any reason, and when the petitioner sent a letter for getting the current and due salary, he was restrained from putting the signature in the attendance register. This letter has been produced as Annexure-5. Case of the petitioner further is, that the petitioner being a senior most Class IV employee under respondent no.4, is entitled to remain in service until programme is completed, and the action of the respondents in not giving salary is wholly

illegal, arbitrary, and malicious. Then, it is alleged, that the respondents issued advertisement on 11.2.2004 for filling up the employees in the said programme, which shows that the programme will continue for long.

A reply has been filed by the respondents contending inter alia, that the petitioner has not come with clean hands, and has deliberately pleaded wrong facts, inasmuch as, the averments made regarding issuance of advertisement, submission of the application, and his having been selected, are all false facts. Neither any such applications were invited, nor petitioner applied, nor there was any selection board, nor was the petitioner appointed. It was also pleaded, that the petitioner also did not work in the office of the answering respondents, inasmuch as there were only three employees, being, Hazari Mal Solanki, Narain Lal Gehlot and Ganga Ram Suthar. It is also pleaded in the reply, that Hazari Mal was working as BRCF, who happens to be the real maternal uncle of the petitioner, and it appears, that the documents like Annexure-4 have been fraudulently prepared by the said maternal uncle who had superannuated on 31.8.2003. Annexures- 2 and 3 have been pleaded to be cooked up documents.

No rejoinder has been filed by the petitioner, to controvert the averments made in the reply. Be that as it may.

In view of the averments made in para-4 of the writ petition, learned counsel for the petitioner was asked to show, the provisions to make appointment of the employees, whereupon he showed a compilation of papers, which only appears to be report of some study, undertaken, and therein the staffing pattern, as prevailing was shown, but then, in the entire compilation there is no provision, showing, as to how the appointments will be made, who would be appointing authority, and what will be the selection process, and criteria of eligibility.

In this background, a look at Annexure-3 shows, that it is dated 4.2.2003, whereby the requirement of a Labour on daily wage basis was conveyed, and for making its appointment, permission was sought, by the BRCF from the District Project Coordinator, and Annexure-2 is dated 6.2.2003 itself, which is contrary to the pleadings of para-4, as it is not an application seeking employment, rather it purports to be joining report, rather information, about the petitioner having started working.

It passes all comprehensions, that the letter dt. 4.2.2003 is sent from Sehoganj to Sirohi, and the sanction is granted, it is conveyed at Sehoganj, then advertisements are issued, same are published, and in response thereto plurality of applications are submitted, selection process is undertaken, and the petitioner could be appointed, he could receive the appointment order and could join also, within this short span of intervening one day only. It is a different story, that Annexure-3, on the top bears the date 4.2.2003, and at the bottom it bears the date 4.2.2002, which has been overwritten as 4.2.2003. Thus, on the face of it, it is clear that the averments made in para-4 of the writ petition, have no trace of truth. In this sequence, it is significant to note, that the averment about the incumbent on the post of BRCF, at the relevant time, being the maternal uncle, has not been controverted, the version propounded by the respondents, about the things being an outcome of manipulations by the said maternal uncle, in the above background, inspires more confidence.

Of course a look at Annexure-4 shows, that thereby the petitioner has been made the payment of salary, inasmuch as, FVC Bill appearing at page-32 of the paper book, being no. 113 dt. 28.11.2003, shows that Cheque No.

735602, for a sum of Rs. 1500/-, was received by the present petitioner, which obviously is of a date after the superannuation of the said maternal uncle, Hazari Mal, but then, looking to the over all situation, in my view, in view of the Constitution Bench judgment of Hon'ble the Supreme Court, in State of Karnataka Vs. Uma Devi, reported in JT 2006(4) SC-420, the petitioner cannot be said to be entitled to any of the reliefs claimed.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/